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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,067

07/13/2005

Wolfgang Huber

2236USWO

1846

43896

7590

12/10/2007

ECOLAB INC.

MAIL STOP ESC-F7, 655 LONE OAK DRIVE

EAGAN, MN 55121

EXAMINER

COMLEY, ALEXANDER BRYANT

ART UNIT

PAPER NUMBER

4156

MAIL DATE

DELIVERY MODE

12/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/535,067	Applicant(s) HUBER ET AL.	
	Examiner Alexander B. Comley	Art Unit 4156	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/13/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Applicant uses the phrase "the patentability" rather than simply "patentability".

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claim 9 recites the limitation "the guides" provided on the housing base. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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2. Claims 7, 8, & 12 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent Lamadrid (4,256,442) directed to an Improved Pressure Plate Movement System for a Peristaltic Pump.

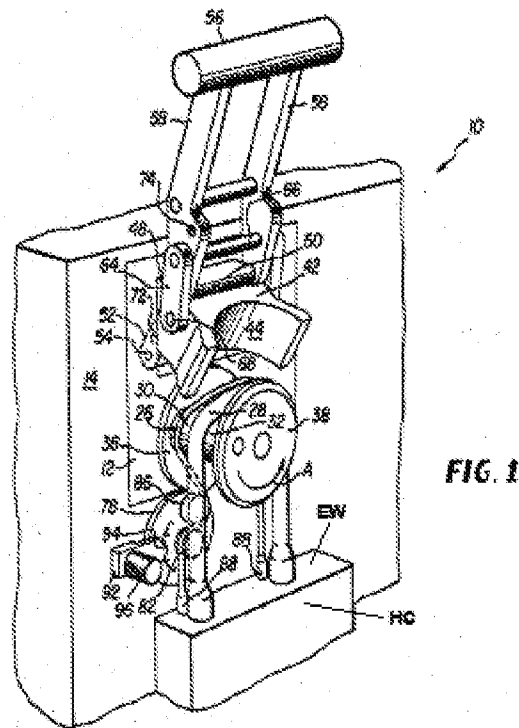


FIG. 1

3. In regards to Independent **Claim 7**, and in reference to Figure 1 shown immediately above, Lamadrid (4,256,442) discloses:

A peristaltic pump (10) comprising: a plurality of rotating squeeze rollers (30, 32); a squeeze hose (28) connectably looped around the squeeze rollers (30, 32); a contact wall (44); and a setting lever (56); the contact wall (44) being opposite the squeeze rollers (30, 32), whereby the contact wall (44) is connected to and movable by the setting lever (56), wherein the squeeze hose (28) is compressed by the squeeze rollers (30, 32) by moving the setting lever (56) which engages the contact wall (44) against the squeeze hose (28).

As shown in Figure 1 above, Lamadrid discloses all elements of the claim. In particular, applicant's contact wall is taught by Lamadrid's inner race 44, which serves the same purpose of compressing the pumping tube between it and the opposing squeeze rollers.

4. In regards to dependent **Claims 8 and 12**, and again in reference to Figure 1 above, Lamadrid discloses:

(8) The peristaltic pump according to Claim 7, wherein the squeeze rollers (30, 32) are positioned on a housing base (12), wherein support detents (70) for receiving pivot cams (72, 76) of the setting lever (56) are provided on the housing base (12).

(12) The peristaltic pump according to Claim 7, wherein the squeeze hose (28) is provided on a hose carrier (HC) when the housing is open and is positionable at a housing end wall (EW).

As shown above in Figure 1, Lamadrid discloses rollers positioned on the base of the pump, along with support detents for receiving the pivoting cams of the lever mechanism. In particular, Lamadrid specifically discloses "Detent means are in fact, however, defined between the operating handle and the links, as well as between the pressure plate housing and the pump base. Such detent means serve a two-fold purpose, the first of which is to additionally insure the fact that the pressure plate is retained in either its open or closed position, and the second purpose is to audibly indicate that the pressure plate has in fact attained either its open or closed position." (Column 3, Lines 15-25) Furthermore, a hose carrier HC is shown in Figure 1 of

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Lamadrid. In particular, Lamadrid discloses "As the ends 88 of the tube 26 are fixed to their nipple fittings in a conventional manner whereby the length of tube 26 trained about the roller cage assembly is fixed." (Column 7, Lines 40-43)

Claim Rejections - 35 USC § 103

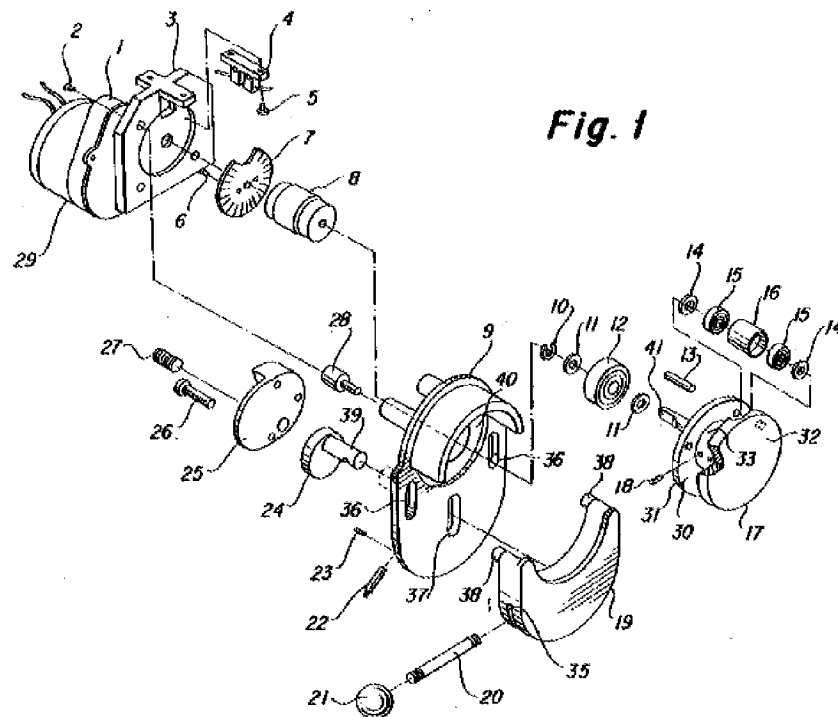
4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lamadrid in view of United States Patent Leveen (4,813,855) directed to a Peristaltic Pump.



7. In regards to dependent **Claim 9**, and in reference to Figure 1 immediately above, Lamadrid in view of Leveen (4,813,855) discloses:

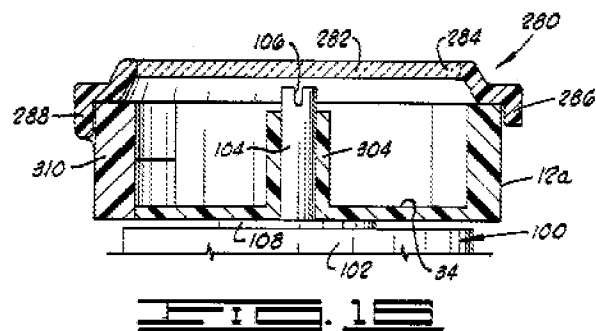
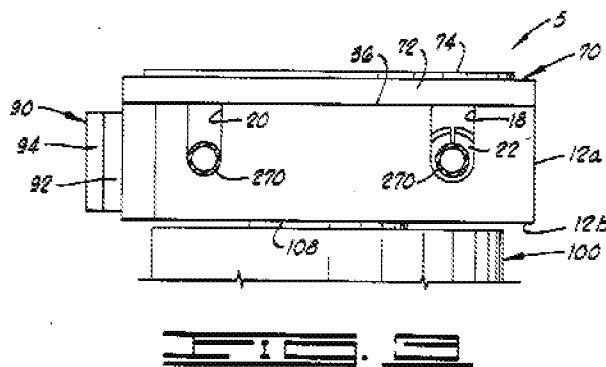
The peristaltic pump according to Claim 8, wherein the guides (36) for receiving slide rails (38) for a housing cover (19) are provided on the housing base (9).

As shown in Figure 1 immediately above, the Leveen portion of the combination discloses all elements of the claim. Leveen specifically discloses guide slots 36 provided on the housing base 9 for guiding and receiving the cover's projections 38. Furthermore, Leveen specifically discloses a housing cover operation that is the same as applicant's housing cover operation by disclosing, "Pump housing 9 is provided with vertical slots 36 in mounting plate 42 to receive the projections 38 on the shoe 19 which permits vertical movement of the shoe 19 against the face of plate 42 of the pump housing. This vertical movement of the shoe 19 permits opening as shown in FIGS. 2

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and 3 of the drawings and closing to engage the flexible tube with the rollers 16 and roller housing 17 as shown in FIG. 4." (Column 3, Lines 36-43) Therefore, it would have been obvious to one of ordinary skill in the art of peristaltic pumps to modify the pressure plate movement system of Lamadrid with the slidable housing cover of Leveen in order to obtain predictable results; those results being a simpler and more efficient housing cover design and operation.

8. Claims 10 & 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lamadrid in view of United States Patent Becker (4,588,996) directed to an Easy Load Peristaltic Pump.



8. In regards to dependent **Claims 10 & 11**, and in reference to Figures 3 & 15 immediately above, Lamadrid in view of United States Patent Becker (4,558,996) discloses:

(10) The peristaltic pump, wherein an end wall with a detent tongue (12a) and with two substantially U-shaped recesses (18, 20) for passage of the squeeze hose (270) is provided on the housing base (12b).

(11) The peristaltic pump, wherein the setting lever is constructed as a yoke with a counter detent (286) for detenting on a detent tongue (12a) when the housing (12b) is closed.

As shown in Figures 3 and 15 above, Lamadrid in view of Becker discloses all elements of the claims. In particular, as shown in Figure 3, Becker shows a detent member 12a, along with two U-shaped slots 18 and 20 for accepting and retaining the squeeze hose. In particular, Becker discloses "Fixed stator member 12a is provided with two openings 18 and 20 for the inlet and output ends of the tubing and have orifices equally designed for accepting at either orifice one pump segment fitting/tube grip/stop 22 which secures the resilient collapsible tubing 270 in a permanent position relative to the fixed stator member 12a, i.e., the tube grip 22 prevents any movement of the resilient collapsible tubing 270 in or out of the fixed stator 12a." (Column 8, Lines 60-69) Furthermore, as shown in Figure 15, Becker discloses a counter detent 286 for detenting with the detent member 12a to restrain the pivoting cover from opening. In particular, Becker discloses "In this alternate embodiment, front flap 286 may fit in snapping engagement over the front portion of fixed stator member 12a (not shown). This alternate embodiment is further provided with a remote offset hinge and flap 288 which rotates around common axis hinge pins 290 so that the alternate door assembly 280 may comfortably rotate vertically about the door stator 310 (not shown) once the front flap 286 of lid 280 is unsnapped from the fixed stator member 12a." (Column 13, Lines 13-22) Therefore, it would have been obvious to one of ordinary skill in the art of peristaltic pumps to modify the pressure plate movement system of Lamadrid with the

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squeeze hose recesses and detenting lever system of Becker in order to obtain predictable results; those results being a fully supported squeeze tube and more securely latched housing cover.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following selected patents and technical literature is cited to further show the state of the art in peristaltic pumps and related technologies in general where the not all obvious salient features of the patents are disclosed as follows:

- US Patent No. 3,963,023 to Hankinson directed to an Extracorporeal Blood Circulation System and Pump discloses a roller-type pump having means for conveniently and automatically positioning the flexible tubing in its operative position within the pump.
- US Patent No. 4,500,269 to Jess directed to an Integral Tube-Loading Assembly for Peristaltic Pump discloses a peristaltic pump that provides an improved tube-loading construction that simplifies the overall design.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEXANDER COMLEY whose telephone number is 571-270-3772. The examiner can normally be reached on MONDAY-FRIDAY 9:00-3:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DAVID J. ISABELLA can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AC
11/26/07

Alexander Comley
Patent Examiner

/DAVID J ISABELLA/

Supervisory Patent Examiner, Art Unit 4156